

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LYLE BREHM, et al.,

Plaintiffs,

v.

CAPITAL GROWTH FINANCIAL,  
INC., et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

8:07CV254

ORDER

This matter is before the court *sua sponte*.

In a motion filed by the plaintiffs and one defendant, the plaintiffs suggest they received notice of the death of one of the defendants, Patrick Harrington. [See Filing No. 359](#) - Motion ¶ 4. In accordance with Federal Rule of Civil Procedure 25(a)(1), the plaintiff has 90 days, from the time “service of a statement noting the death” of a party is filed on the record, to move for substitution of the deceased party, if the claim is not automatically extinguished, or the action shall be dismissed against the deceased party. Accordingly,

**IT IS ORDERED:**

**On or before August 26, 2010**, the plaintiffs shall clarify the record with record to Mr. Harrington. The plaintiffs may, for example, file a motion for substitution of parties, if appropriate, in accordance with the provisions of Rule 25, or file a motion to voluntarily dismiss Patrick Harrington as a defendant in this action, in accordance with Rule 41(a). If the plaintiffs fail to comply with this order the defendant Patrick Harrington may be dismissed as a party, without further notice, pursuant to Fed. R. Civ. P. 41(b).

DATED this 27th day of May, 2010.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge